

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Hearing Date:

March 6, 2002

At 10:00 am

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In re :
EMPIRE ONE TELECOMMUNICATIONS, :
INC., et al., :
Debtors. :

Chapter 11 Cases Nos.
:
01-11894(AJG)
:
(Jointly Administered)
:
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**NOTICE OF MOTION UNDER 11 U.S.C. §§ 105, 362(D),
364(C)(1), 364(C)(2), 364(C)(3) AND 364(D)(1) AND
BANKRUPTCY RULES 4001(C) AND 9014 FOR AN ORDER
AUTHORIZING AN AMENDMENT OF THE DEBTORS'
POST-PETITION CREDIT AGREEMENT WITH EOT LENDING CORP.**

PLEASE TAKE NOTICE that on March 6, 2002 at 10:00 a.m., a hearing will be held before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, United States Bankruptcy Court, Alexander Hamilton Courthouse, One Bowling Green, Room 617, New York, New York 10004, on the motion (the "Motion") of the above-captioned debtors and debtors in possession (the "Debtors") for an order authorizing an amendment of the Debtors' existing post-petition credit facility with EOT Lending Corp.

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, filed with the Clerk of the Bankruptcy Court (with a copy to Judge Gonzalez' chambers at the above address), and received by counsel to the Debtors, LeBoeuf, Lamb, Greene

& MacRae, L.L.P., 125 West 55th Street, New York, New York 10019, Attn:
Timothy W. Walsh, Esq., no later than March 4, 2002 at 5:00 p.m.

Dated: New York, New York
February 19, 2002

LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.

By: /s/ Rosemary Scariati
Timothy W. Walsh (TW-7409)
Rosemary Scariati (RS-4181)
125 West 55th Street
New York, New York 10019
(212) 424-8000

ATTORNEYS FOR DEBTORS

NYC 409883

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

Chapter 11 Cases No.

01-11894 (AJG)

In re

**EMPIRE ONE TELECOMMUNICATIONS,
INC., et al.,
Debtors.**

(Jointly Administered)

**MOTION UNDER 11 U.S.C. §§ 105, 362(D),
364(C)(1), 364(C)(2), 364(C)(3) AND 364(D)(1) AND
BANKRUPTCY RULES 4001(C) AND 9014 FOR AN ORDER
AUTHORIZING AN AMENDMENT OF THE DEBTORS'
POST-PETITION CREDIT AGREEMENT WITH EOT LENDING CORP.**

TO THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

Empire One Telecommunications, Inc., Sonus Communications, Inc., Empire One Power, Inc., and EOT Telecommunications of Canada, Inc. (collectively, the “Debtors”), by their attorneys, LeBoeuf, Lamb, Greene & MacRae, L.L.P., make this motion (the “Motion”) for orders pursuant to sections 105, 362(d), 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code and Rules 4001(c) and 9014 of the Federal Rules of Bankruptcy Procedure authorizing the Debtors to amend their existing post-petition credit facility dated as of May 11, 2001 (the “Credit Facility”) with EOT Lending Corp., as described below, and respectfully represent as follows:

BACKGROUND

1. On April 2, 2001 (the “Commencement Date”), the Debtors commenced cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession

pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of this Court.

2. An official committee of unsecured creditors (the "Committee") was appointed in these cases on April 24, 2001.

3. The Debtors provide a diverse range of wholesale and retail integrated communications services, including standard voice telecommunications (local and long distance), dial-up and dedicated Internet access and specialized data services for commercial subscribers. The Debtors maintain Web portals in Chinese, Russian and English, and their marketing, sales and customer services are provided in the languages of their target markets.

4. The filing of the Debtors' chapter 11 petitions was precipitated by a number of factors. The voice and data service technology employed by the Debtors, known as "Voice Over IP," did not command the degree of customer acceptance and demand as contemplated. This factor, coupled with increased competition and service outages, negatively impacted price of the service. In addition, the Debtors entered into agreements with several service providers at uneconomic terms, which has resulted in significant operating losses. The Debtors have had to absorb substantial write-downs of network equipment upon discontinuing service with these providers. The Debtors have been further burdened by considerable existing debt and the inability to obtain additional financing going forward.

5. Pursuant to the interim order issued by this Court on May 23, 2001, and the final order issued by this Court on June 5, 2001, the Credit Facility, a copy of which, along with the accompanying Pledge and Security Agreement, is annexed hereto as Exhibit "A," was approved

in its entirety and the Debtors were authorized, pursuant to section 105, 362(d), 363(b), 364(c)(1), 364(c)(2) AND 364(c)(3) of the Bankruptcy Code, to enter into a post-petition financing arrangement with EOT Lending Corp. pursuant to the terms of the Credit Facility. The original availability under the Credit Facility was \$600,000.

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

7. The Debtors request that, upon notice and hearing pursuant to Bankruptcy Rules 4001(c) and 9014, the Court approve an amendment (the “Amendment”) to the Credit Facility which provides for an additional \$600,000 in post-petition financing, by EOT Lending Corp.¹, to the Debtors. A copy of the Amendment is annexed hereto as Exhibit “B.”

8. As set forth in the Affidavit of Frank C. Szabo, Chief Financial Officer of the Debtors, annexed hereto as Exhibit “C” (the “Szabo Affidavit”), Court approval of the Amendment will ensure that the Debtors have credit availability to continue their ordinary course operations and meet certain anticipated expenses in the next several months, while the Debtors finalize and file a proposed plan of reorganization. Specifically, in addition to bridging the gap

¹ As has been disclosed to the Court in the past, EOT Lending Corp. is composed of nineteen individual and corporate investors, and was formed for the purpose of providing post-petition financing to the Debtors. Certain members of EOT Lending Corp. are members of Quadrant Management, Inc. (“Quadrant”), an investment management company that owns and manages a portfolio of companies in the technology sector. Some of Quadrant’s management team is currently on the Debtors’ boards of directors, and has provided the Debtors with various consultation and advisory services since January 2001. Quadrant has in the past extended financing to the Debtors’ non-debtor parent company, Sonus Communications Holdings, Inc. (“Sonus Holdings”). Quadrant currently holds a lien on the accounts receivable of Empire One Telecommunications, in the amount of \$80,000, to secure financing extended to Sonus Holdings under an indenture executed on January 3, 2001.

caused by the lag between acquiring and billing new customers, discussed more fully below, the Debtors anticipate making a significant tax payment in March, as well as providing a security deposit for new office space in the near future.

9. The Amendment would increase the commitment and availability under the Credit Facility by \$600,000, to a total of \$1,200,000. The Amendment would also increase the total amount of the Carve-Out Expenses (as defined in the Credit Facility) from \$300,000 to \$600,000. All of the other terms of the Credit Facility, including the term and the rate of interest, will remain unchanged.

10. In addition, as set forth in the Credit Facility, EOT Lending will receive a perfected lien on all of the property, real and personal, tangible and intangible, of the Debtors' estates (the "Collateral"), all amounts advanced under the Credit Facility and the Amendment, as well as an administrative claim with priority pursuant to Bankruptcy Code section 364(c)(1) over any and all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b), with the exception of certain Carve-Out Expenses, which will rank pari passu with such claim. 11 U.S.C. § 364(c)(1). The Credit Facility will be secured pursuant to Bankruptcy Code section 364(c) and (d) by a perfected first priority senior security interest in and lien upon the Collateral, with the exception of Collateral securing Permitted Liens (as defined in the Credit Facility), in which case the Lender's lien will be a second priority interest, junior only to such Permitted Liens, and subject, in each case, to the Carve-Out Expenses.

11. As set forth in the Szabo Affidavit, in light of the Debtors' limited post-petition financing options, the Debtors believe that the terms of the Credit Facility are fair, reasonable and in the best interests of the Debtors' estates and creditors.

12. Pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b), because there are no novel issues of law presented herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this motion.

13. No previous application for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order approving the proposed Amendment to the Credit Facility, and grant the Debtors such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 19, 2002

LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.

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